No. 77-1664

In the Supreme Court of the United States

OCTOBER TERM, 1978

LORENZO SHELTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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MEMORANDUM FOR THE UNITED STATES

We have concluded after review of this case that petitioner's federal prosecution for extortion in violation of the Hobbs Act, 18 U.S.C. 1951, after he had been tried for a conspiracy to violate the Hobbs Act involving the same extortionate acts, was not consistent with Department of Justice policy, and we are therefore requesting that this Court vacate petitioner's convictions.

Petitioner was originally indicted in the United States District Court for the Eastern District of Michigan for conspiring with unindicted co-conspirators Paul M. LaCoursiere and Emmitt Kettner to violate the Hobbs Act during the period from 1974 to 1976. The substance of the conspiracy alleged in the indictment was that petitioner, an employee of the Detroit Public Housing Commission, conspired with Kettner and LaCoursiere to

extort money from local contractors, including LaCoursiere, in exchange for assisting the contractors to obtain city contracts (C.A. App. a8—a1).[1] During the trial on this indictment the court ruled that LaCoursiere could not be considered a co-conspirator because he had been cooperating with the government during the conspiracy and that the proofs of the conspiracy would therefore be limited to the period when Kettner was actively participating in it. Since the government's evidence would show that Kettner's participation terminated before LaCoursiere paid any money to petitioner, the prosecutor believed it appropriate to move to dismiss the indictment, and the district court granted the motion (Pet. App. 16).

A second indictment was thereafter returned in the United States District Court for the Eastern District of Michigan charging petitioner with three substantive counts of extortion under the Hobbs Act during the same period covered by the previous indictment. Each count was based on a different payment of money by LaCoursiere to petitioner, each of which had been alleged as an overt act in the conspiracy indictment. The evidence at trial established that from 1973 to 1976 petitioner was the maintenance coordinator in the operations section of the Detroit, Michigan, Public Housing Commission (Tr. 17, 47-52). At a meeting in the Fall of 1974 Kettner introduced petitioner to LaCoursiere, a local contractor who, as previously noted, was cooperating with the government investigation (Tr. 54). LaCoursiere subsequently agreed to pay petitioner ten per cent of the profits on repair contracts awarded his company by the

[1]"C.A. App." refers to the Appendix to petitioner's brief in the court of appeals.

city in return for petitioner's assistance in securing those contracts (Tr. 129-144). Pursuant to this arrangement LaCoursiere made three payments to petitioner (Tr. 123-126, 137-151).

The jury found petitioner guilty of two of the counts[2] and the district court sentenced him to concurrent terms of two years' imprisonment, with all but 90 days suspended. The court of appeals affirmed, rejecting petitioner's argument that the proscriptions against substantive acts and against conspiracy under the Hobbs Act constituted only one offense, and that his trial on the substantive charges following his trial on the conspiracy charge thus violated the Double Jeopardy Clause (Pet. App. A).

We agree with the court of appeals that the convictions are legally valid. See *Callanan* v. *United States*, 364 U.S. 587. However, as set forth in *Petite* v. *United States*, 361 U.S. 529, 530, it is the general policy of the federal government " 'that several offenses arising out of a single transaction should be alleged and tried together and should not be made the basis of multiple prosecutions, a policy dictated by considerations both of fairness to defendants and of efficient and orderly law enforcement.' " See *Marakar* v. *United States*, 370 U.S. 723. After careful review we have concluded that this case does not present such unusual or exceptional circumstances as would justify departure from that policy.[3]

[2]Each payment was separately alleged as the basis of one count of the three-count indictment, and petitioner was convicted on two of these counts. He was convicted of extorting $450 in September 1975 and of extorting $55 in March 1976. The jury returned a not guilty verdict with respect to an alleged payment of $250 made in February 1975.

[3]While the fact that the first prosecution involved no findings bearing on whether petitioner committed the acts charged in the second prosecution might in some circumstances justify a retroactive authorization of the second prosecution, we have concluded that retroactive authorization would be inappropriate in this case.

We therefore respectfully request this Court to permit effectuation of the government's policy against successive prosecutions by granting the petition, vacating the judgment of the court of appeals, and remanding the case to the district court with instructions to grant the government's motion to dismiss the indictment. See *Rinaldi* v. *United States*, 434 U.S. 22; *Marakar* v. *United States, supra; Petite* v. *United States, supra.*

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

AUGUST 1978.

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